

Summary of State/Subdivision Agreements with Johnson & Johnson and 3 Major Pharmaceutical Distributors

BACKGROUND:

Opioid overdose deaths are rising dramatically, and resources are desperately needed to address the epidemic. Since late 2019, the opioid addiction crisis in the US has resurged with a vengeance. During 2020, 93,000 Americans have died from opioid overdoses — the most ever in a single year, and more than have ever died in a single year in the US from either car crashes or gun violence. For several years, states and local governments have been investigating and litigating against many companies to hold accountable those responsible, change pharmaceutical industry practices for the better, and recover much-needed funds to address the crisis.

A broad coalition of states and subdivisions have now reached final agreements with four of these companies: one agreement is with opioid manufacturer Johnson & Johnson and the other is with the three major pharmaceutical distributors — AmerisourceBergen, Cardinal Health, and McKesson. These agreements resolve legal claims against those companies stemming from actions that fueled the opioid addiction epidemic. The agreements will be effectuated through consent orders entered in each participating state. Other companies are not covered by these agreements and remain under active investigation and litigation.

FINANCIAL TERMS:

The agreements with the distributors and Johnson & Johnson provide for payments totaling \$26 billion, with more than \$23.9 billion available to fund efforts to stem the crisis. The funding will be distributed to states according to the allocation agreement reached among states. Subdivisions can only participate in the agreement if their state participates. Distribution within states can be handled either through an intrastate agreement between the state and its subdivisions or through the default arrangement set forth in the agreements with the companies. States and local governments must use the funding to support any of a wide variety of strategies to fight the opioid crisis. There are also provisions for the companies to compensate attorneys who have pursued opioid litigation on behalf of states and local governments.

Because of the unprecedented nature of this nationwide litigation — involving thousands of separate cases and tens of thousands of potential governmental claimants — there are several provisions calibrated to incentivize maximum participation by state and local governments and to incentivize early participation. They include the division of payments into

base and bonuses, with bonuses based on participation levels. There are also suspension, offset, and look-back provisions that are intended to deter future opioid litigation against the companies by state and local governments, now that they have agreed to a \$26 billion global nationwide settlement. These deterrents are substantially lessened in the event certain high levels (tiers) of participation by states and subdivisions are achieved nationally.

A state and its subdivisions can secure maximum payments for themselves by achieving full resolution (subject to certain minor exceptions) of the actual and potential opioid-related legal claims by public entities within the state. This can be done through voluntary opt-ins, legislation, judicial action, or any combination of these methods that resolves existing claims and bars future claims. States that are unable to achieve complete resolution can still receive substantial payments by resolving a significant portion of current and future subdivision claims. The partial payment percentages are set forth in sliding scales based on participation levels among subdivisions within a state.

The first payments will be received by state and local governments by July 1, 2022 assuming a critical mass of jurisdictions join. Johnson & Johnson's payout will be over 8 years; the distributors will pay their amount over 17 years. The states and local governments will receive 40% of the combined payout within the first 5 years, assuming the maximum bonus is achieved.

INJUNCTIVE TERMS:

In addition to the financial components, the agreements will also subject the companies to court orders requiring them to make major changes in how prescription opioids are distributed and sold, with far more oversight and accountability throughout that process, including an independent monitor, to help prevent deliveries of opioids to pharmacies where diversion and misuse are occurring. The distributors will also be required to establish and fund a centralized, independent clearinghouse using detailed data analytics to keep close track of opioid distribution throughout the country and raise red flags for suspicious orders. Johnson & Johnson will be prohibited from selling or promoting opioids.

SCHEDULE:

The deadline for states to sign onto the agreements is August 21, 2021. Subdivisions in participating states will then have through January 2, 2022, to join.

The first payments are expected to be received by participating states and subdivisions in April 2022.